IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.26 OF 1993
in
L. A. R.NO. 747 OF 1987

The State of Maharashtra,
(through the Special Land
Acquisition Officer, Metro
Centre No.9, Panvel,
Dist. Raigad) .. **Appellant**
(Original Opponent)

..**versus**.

Shri Ismile Abdul Rahiman
Navadekar, age 66 yrs.
Occu: Agriculture,
R/o Pada Mohalla, Panvel,
Dist. Raigad (Deceased-
through legal heirs:-

1/1 Smt. Khatunbibi Ismile
Navadekar, age 50 years,
Occu: Agriculture,
R/o Mohalla Pada,
Tal. Panvel, Dist. Raigad .. **Respondent**
(Original Claimant)

Mr. Bharat Mehta, A.G.P. For the Appellant.
Mr. A.N. Maniyar, Adv. For Respondent.

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Coram : K.J. Rohee, J.

Reserved on : 13th April, 2006.

Pronounced on : 21st April, 2006.

Judgment :

The State has preferred this appeal against the judgment and award passed by the 3rd Additional District Judge, Raigad- Alibag in Land Acquisition Reference No. 747/1987 on 29.1.1992 whereunder the rate of the land under reference was fixed at Rs.13/- per square meter. The respondent/claimant has filed cross-objection in respect of the said judgment and award claiming compensation @ Rs.20/- per square meter.

2. The claimant is the tenant of field S.No. 102-A/1-A, area 1 A 11 G 4 A. assessment Rs.14.60 situated at village Karanjade , taluka Panvel, district Raigad. By notification dated 3.2.1970, the said land was acquired by the State for New Bombay Project. According to the claimant, the Land Acquisition Officer fixed compensation of the said land at Rs. 6666.50 ps out of which the claimant received only 60 % thereof as tenant. The claimant, therefore, moved an application under Section 18 of the Land Acquisition Act, 1894 for enhancement in compensation.

3. According to the claimant the land which has been acquired was the only land under his cultivation. The compensation granted was very meager and inadequate. He

is unable to purchase any other land out of the amount of compensation. The claimant used to take paddy crop from the said land. The Land Acquisition Officer failed to take into consideration that there was 50 X 20 ft. cattle shed in the said land and a well. The said land is at a distance of 1 ½ furlong from Panvel- Uran road which abuts Panvel College road. Panvel Uran railway track is not far away from the said land. Electric powerline passes from near the said land. Electricity and water is available near the land. Hence the said land is suitable for residential and industrial purposes. It has got high non-agricultural potentials. The market at Panvel is within the reach of the said land. The claimant , therefore, claimed compensation @ Rs. 80,000/- per acre.

4. The State opposed the claim for enhanced compensation by their written statement. The State submitted that the compensation awarded by the Land Acquisition Officer is adequate, reasonable and in consonance with the market value of the land prevailing at the time of preliminary notification. The claim made by the claimant is exorbitant and is not based on sales statistics. It is devoid of any merits and is liable to be dismissed.

5. The claimant examined CW1 Mahamad Saleha Mahamad Ibrahim Navadekar holding power of attorney for the widow of the original claimant and CW2 J.N. Kulkarni (Valuer). After considering the oral and documentary evidence on record, the Reference Court held that the

compensation granted to the claimant by the Land Acquisition Officer is inadequate and improper and that the claimant is entitled to enhanced compensation. The Reference Court granted compensation @ Rs. 13/- per square meter. The said judgment and award is challenged by both the State as well as the claimants.

6. I have heard Mr. Bharat Mehta, AGP for the State/appellant and Mr. A. N. Maniyar, Advocate for the respondents/claimants.

7. The following points arise for my determination and I record my findings on them as under:

	Points	**Findings**
i)	Whether the rate of the land acquired by the Reference Court at Rs.13/- per square meter is adequate and reasonable?...	Yes.
ii)	What order ?.....	The appeal as well as cross-objection are dismissed.

REASONS

8. Mr. Bharat Mehta, the learned AGP, submitted that the Reference Court has not discussed as to how the land in question has non-agricultural potentiality when the evidence

of the claimant himself shows that neither water nor electricity is available to the said land. Mr. Mehta further submitted that the Reference Court mainly relied on the evidence of J. N. Kulkarni (Valuer), who cannot be treated as an independent witness but whose evidence is totally biased. Mr. Mehta further submitted that J.N. Kulkarni (Valuer) did not find a single sale transaction in respect of any land situated at village Karanjade in order to determine the market price of the land acquired. Mr. Mehta submitted that the land acquired was purely an agricultural land which was producing paddy and hence the criteria of non-agricultural land cannot be used for fixing the amount of compensation. Mr. Mehta submitted that the Reference Court has fixed the compensation @ Rs.13/- per square meter merely as a guess work. Mr. Mehta submitted that the compensation fixed by the Land Acquisition Officer is just and adequate and the Reference Court committed an error in enhancing the compensation.

9. Mr. Maniyar, the learned counsel for the claimant, on the other hand submitted that the Reference Court has not taken into consideration the existence of cattle-shed and a well in the land acquired. It has not given adequate importance to the non-agricultural potentiality of the land acquired. He submitted that the rate fixed by the Reference Court at Rs.13/- per square meter is inadequate and it should have been fixed at Rs.20/- per square meter. In support of

his plea Mr. Maniyar placed his reliance on the decision of the Division Bench of this Court in First Appeal No.875/1985 decided on 16.3.2000 and a decision of Single Bench of this Court in **Mohomed Alli .vs. Special Land Acquisition Officer, Panvel – 2005 (2) Mh. L. J. 142**.

10. I have carefully considered the rival submissions. I have also gone through the record and proceedings as well as the cases cited by the learned counsel for the claimant.

11. It has come in the evidence of CW2 J.N. Kulkarni that when he inspected the land in question on 4.8.1988, he came across the structures , trees and well existing therein. CW1 Mahamad Saleha Mahamad Ibrahim admitted during cross-examination that there is no evidence in respect of the cattle shed, well and trees except his bare words. The Reference Court has found that while handing over possession of the land under reference by the claimants, there is no mention of any type of structures, well etc. in the possession receipt dated 26.2.1987. The Reference Court, therefore, rejected the claim for compensation on account of cattle-shed and well. I do not see any reason to disagree with the findings recorded by the Reference Court.

12. During cross-examination CW2 J.N. Kulkarni admitted that he has not considered any sale deed from village Karanjade. He also admitted that no land is converted into non-agriculture in village Karanjade. He also admitted

that he has not considered income capitalisation method. He admitted that no water and electricity is available to the land in question . Thus his testimony to the effect that though the land is agriculture one, because of the situation it was having non-agricultural potentiality for residential, commercial and industrial purposes cannot be accepted. Secondly the rate of the land estimated by him at Rs.20/- per square meter as on 4.2.1970 cannot be relied upon.

13. While deciding First Appeal No.875/1985 the criteria that was applied by the Division Bench for enhancing the compensation was the proximity of land from Highway. The same criteria was adopted by the Single Bench in 2005 (2) Mh.L.J.142.

14. The valuation report (Exh.38) prepared by CW2 J.N. Kulkarni shows that Bombay-Pune National Highway No.4 is at a distance of 1760 meters from the land acquired; Sion-Panvel Highway is at a distance 5120 meters and Panvel-Uran road is at a distance of 480 meters. Taking into consideration the above distances, the rate fixed by the Reference Court at Rs.13/- per square meter appears to be just and reasonable. It is neither on higher side nor on lower side. Hence the same rate is hereby confirmed.

15. It may be noted that in First Appeal No.875/1985 as well as in 2005(2) Mh.L.J. 142, this Court dealt with the market value of the land acquired from villages Pendhar, Taloja, Panchnand, Ove, Belpada and Kharghar whereas in

the present appeal we are concerned with the land situated at village Karanjade. Hence the rates fixed for the lands in those cases cannot be applied to the land in the present appeal.

16. In view of the above discussion, I find no merit in the appeal as well as in the cross-objection. Hence I pass the following order.

ORDER

The appeal as well as cross-objection are dismissed. Parties to bear their own costs.

(K. J. Rohee, J.)

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